

EXHIBIT F

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DEFTS' Exhibit 2
Witness: MALONE for ID
P. 1 of 47 PP. 11-23-15
Lindsay Pinkham CSR 3716 CRR

8 **THE SPENCER LAW FIRM**

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15 **Attorneys for Plaintiffs**

16 **UNITED STATES DISTRICT COURT,
17 NORTHERN DISTRICT OF CALIFORNIA,
18 OAKLAND DIVISION**

19 SEAN L. GILBERT,
20 KEEYA MALONE,
21 KIMBERLY BILBREW,
22 CHARMAINE B. AQUINO,
23 on behalf of themselves and all
24 persons similarly situated,

25 Plaintiffs,

26 v.

27 MONEY MUTUAL, LLC,
28 SELLING SOURCE, LLC,
29 MONTEL BRIAN ANTHONY
30 WILLIAMS,
31 GLENN MCKAY,
32 PARTNER WEEKLY, LLC,
33 PREVIOUSLY SUED AS DOE NO. 1,

34) Case No. CV-13-01171-JSW
35) Complaint filed February 11, 2013
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1	BRIAN RAUCH, PREVIOUSLY SUED AS DOE NO. 2,) ("RICO"), 18 U.S.C. § 1961
2	JOHN HASHMAN, PREVIOUSLY SUED AS DOE NO. 3,) 3. Violation of Unfair Competition Law
3	RARE MOON MEDIA, LLC, ¹ PREVIOUSLY SUED AS DOE NO. 5,) (Business and Professions Code § 17200 et. seq.)—Unlawful Act
4	JEREMY SHAFFER, PREVIOUSLY SUED AS DOE NO. 6,) 4. Violation of Unfair Competition Law
5	BRAD LEVENE, PREVIOUSLY SUED AS DOE NO. 7,) (Business and Professions Code § 17200 et. seq.)—Fraud
6	LINDSEY COKER, PREVIOUSLY SUED AS DOE NO. 8,)
7	JOSH MITCHEM, PREVIOUSLY SUED AS DOE NO. 9,)
8	DAVID A. JOHNSON PREVIOUSLY SUED AS DOE NO. 15,)
9	VECTOR CAPITAL IV LP, PREVIOUSLY SUED AS DOE NO. 17,)
10	KIRK CHEWNING PREVIOUSLY SUED AS DOE NO. 18,)
11	SAMUEL W. HUMPHREYS PREVIOUSLY SUED AS DOE NO. 19,)
12	DOUGLAS TULLEY PREVIOUSLY SUED AS DOE NO. 20,)
13	ALTON F. IRBY III PREVIOUSLY SUED AS DOE NO. 21)
14	and Does 22 through 100 inclusive,)
15	Defendants.)
16)

19 Plaintiffs allege as follows:

20 **PARTIES**

21 1. Plaintiffs SEAN L. GILBERT, KEEYA MALONE, KIMBERLY BILBREW and
22 CHARMAINE B. AQUINO, individuals, bring this action on behalf of themselves,
23

24 ¹The Court has granted an order compelling arbitration as to Defendants David A.
25 Johnson, Vector Capital IV LP and Kirk Chewning and has stayed the civil action against
26 them. The Court has granted an order compelling arbitration of the claims against
27 Defendants Rare Moon Media, LLC, Jeremy Shaffer, Brad Levene, Lindsey Coker, and
28 Josh Mitchem and has dismissed those claims. These parties are listed in the caption
only because the action is either stayed or no judgment has been entered in their favor.
Other formerly named defendants and claims have been deleted after judgments were
entered as to those parties or claims, without waiving any rights preserved on appeal.

1 and on behalf of a class of similarly situated persons pursuant to Federal Rule of
2 Civil Procedure 23. Plaintiffs are residents of the State of California and competent
3 adults.

4 2. Plaintiffs are informed and believe, and thereupon allege, that Defendant ~~BANK OF~~
5 ~~AMERICA, N.A. is now, and at all times mentioned in this Complaint was, a national~~
6 ~~association based in North Carolina and doing business in the County of Alameda,~~
7 ~~State of California, and throughout the State of California and United States. It has~~
8 ~~not designated a principle place of business in California.~~

9 3. Plaintiffs are informed and believe, and thereupon allege, that Defendant
10 ~~MONEYMUTUAL, LLC is now, and at all times mentioned in this Complaint was, a~~
11 ~~business of unknown form based in Silver Springs, Nevada and doing business in the~~
12 ~~County of Alameda, State of California, and throughout the State of California and~~
13 ~~United States. It has not designated a principle place of business in California.~~

14 4. Plaintiffs are informed and believe, and thereupon allege, that Defendant ~~SELLING~~
15 ~~SOURCE, LLC is now, and at all times mentioned in this Complaint was, a business~~
16 ~~of unknown form based in Las Vegas, Nevada and doing business in the County of~~
17 ~~Alameda, State of California, and throughout the State of California and United~~
18 ~~States. It has not designated a principle place of business in California.~~

19 5. Plaintiffs are informed and believe, and thereupon allege, that Defendant ~~MONTEL~~
20 ~~BRIAN ANTHONY WILLIAMS, is now, and at all times mentioned in this Complaint~~
21 ~~was, a natural person residing in Jackson, Tennessee and doing business in the~~
22 ~~County of Alameda, State of California, and throughout the State of California and~~
23 ~~United States.~~

24 6. Plaintiffs are informed and believe, and thereupon allege, that Defendant ~~GLENN~~

1 MCKAY, is now, and at all times mentioned in this Complaint was, a natural person
2 residing in the State of Nevada and doing business in the County of Alameda, State
3 of California, and throughout the State of California and United States. McKay is the
4 President and Chief Operating Officer of Selling Source, LLC.
5

6 7. Plaintiffs are informed and believe, and thereupon allege, that Defendant Partner
7 Weekly, LLC, is now, and at all times mentioned in this Complaint was, a business of
8 unknown form based in Las Vegas, Nevada and doing business in the County of
9 Alameda, State of California, and throughout the State of California and United
10 States. It has not designated a principle place of business in California.
11

12 8. Plaintiffs are informed and believe, and thereupon allege, that Defendant BRIAN
13 RAUCH, is now, and at all times mentioned in this Complaint was, a natural person
14 residing in San Diego, California and doing business in the County of Alameda, State
15 of California, and throughout the State of California and United States. Rauch was
16 Vice President of Marketing for Partner Weekly during parts of the Class Period.
17

18 9. Plaintiffs are informed and believe, and thereupon allege, that Defendant John
19 Hashman, is now, and at all times mentioned in this Complaint was, a natural
20 person residing in the State of Nevada and doing business in the County of Alameda,
21 State of California, and throughout the State of California and United States.
22 Hashman is the President of Partner Weekly.
23

24 10. Plaintiffs are informed and believe, and thereupon allege, that Defendant Rare Moon
25 Media, LLC is now, and at all times mentioned in this Complaint was, a business of
26 unknown form based in Lenexa, Kansas and doing business in the County of
27 Alameda, State of California, and throughout the State of California and United
28 States. It has not designated a principle place of business in California.
29

1 11. Plaintiffs are informed and believe, and thereupon allege, that Defendant Jeremy
2 Shaffer is now, and at all times mentioned in this Complaint was, an individual
3 residing in the State of Kansas. He is the President and owner of Rare Moon Media.
4

5 12. Plaintiffs are informed and believe, and thereupon allege, that Defendant Brad
6 Levene is now, and at all times mentioned in this Complaint was, an individual
7 residing in the State of Kansas. He is the Vice President of Marketing for Rare Moon
8 Media.

9 13. Plaintiffs are informed and believe, and thereupon allege, that Defendant Lindsey
10 Coker is now, and at all times mentioned in this Complaint was, an individual
11 residing in the State of Kansas. She is an account executive for Rare Moon Media.
12

13 14. Plaintiffs are informed and believe, and thereupon allege, that Defendant Josh
14 Mitchem is now, and at all times mentioned in this Complaint was, an individual
15 residing in the State of Kansas. He is the founder of Rare Moon Media and was its
16 President for part of the class period and may still be its President.
17

18 15. Plaintiffs are informed and believe, and thereupon allege, that Defendant David A.
19 Johnson, is now, and at all times mentioned in this Complaint was, an individual
20 residing in Atlanta, Georgia.
21

22 16. Plaintiffs are informed and believe, and thereupon allege, that Defendant Vector
23 Capital IV LP is now, and at all times mentioned in this Complaint was, a business of
24 unknown form based in San Francisco, California, and doing business in the County
25 of Alameda, State of California, and throughout the State of California and United
26 States.
27

28 17. Plaintiffs are informed and believe, and thereupon allege, that Defendant Kirk
Chewning, is now, and at all times mentioned in this Complaint was, an individual

1 residing in St. Croix, American Virgin Islands.

2 18. Plaintiffs are informed and believe, and thereupon allege, that Defendant Samuel W.
3 Humphreys, is now, and at all times mentioned in this Complaint was, an individual
4 residing in San Francisco, California.
5

6 19. Plaintiffs are informed and believe, and thereupon allege, that Defendant Douglas
7 Tolley, is now, and at all times mentioned in this Complaint was, an individual
8 residing in San Francisco, California.
9

10 20. Plaintiffs are informed and believe, and thereupon allege, that Defendant Alton F.
11 Irby III, is now, and at all times mentioned in this Complaint was, an individual
12 residing in San Francisco, California.
13

14 21. Plaintiffs do not know the true names or capacities of the Defendants sued herein as
15 DOES 22 through 100 inclusive, and therefore sue these Defendants by such
16 fictitious names. Plaintiffs will amend this complaint to allege their true names and
17 capacities when ascertained. Plaintiffs are informed and believe, and thereon allege,
18 that each of these fictitiously named Defendants is responsible in some manner for
19 the occurrences herein alleged, and that Plaintiffs' damages as herein alleged were
20 proximately caused by those Defendants. Each reference in this complaint to
21 "Defendant" or "Defendants" or to a specifically named Defendant refers also to all
22 Defendants sued under fictitious names.
23

24 22. Plaintiffs are informed and believe, and thereon allege, that at all times herein
25 mentioned each of the Defendants, including all Defendants sued under fictitious
26 names, and each of the persons who are not parties to this action but are identified
27 by name or otherwise throughout this complaint, was the alter ego of each of the
28 remaining Defendants, was the successor in interest or predecessor in interest, and

1 was the agent and employee of each of the remaining Defendants and in doing the
2 things herein alleged was acting within the course and scope of this agency and
3 employment.

4

CLASS ALLEGATIONS

5 23. Plaintiffs are members of a class of persons, the members of which are similarly
6 situated to each other member of that class. The Selling Source class is defined as
7 follows:

9 All California residents who received a “payday loan” from
10 an UNLICENSED LENDER on or after February 11, 2009 by
11 using any website affiliated with or in response to an email
12 from Selling Source, LLC or one of its subsidiaries. Any
13 lender owned by an American Indian tribe during the entire
14 Class Period is excluded.

15 24. Plaintiffs are also members of a MoneyMutual subclass which is comprised of:

16 All California residents who obtained a “payday loan” from
17 an UNLICENSED LENDER on or after February 11, 2009 by
18 using the MoneyMutual website. Any lender owned by an
19 American Indian tribe during the entire Class Period is
20 excluded.

21 25. Plaintiffs are also members of a Cash Yes subclass which is comprised of:

22 All California residents who obtained a “payday loan” from
23 Cash Yes or Cash Jar on or after February 11, 2009 through
24 any means.

25 26. Plaintiffs are informed and believe, and thereupon allege, that the classes Plaintiffs
26 represent include at least 100 persons who were referred through a Selling Source
27 website or in response to a Selling Source email or from the MoneyMutual website to
28 UNLICENSED LENDERS and subsequently obtained payday loans from them
during the specified time frame. There are approximately 40,000 members of the
Cash Yes subclass.

1 27. The identity of the members of the classes is ascertainable from Defendants' own
2 business records or those of their agents because Selling Source and its subsidiaries
3 were paid a fee for each payday loan referral and documented the identify of each
4 such borrower and because David Johnson, Kirk Chewning and Vector Capital
5 tracked the identity of each Cash Yes or Cash Jar borrower.
6

7 28. The Plaintiffs and Class Members' claims against Defendants involve questions of
8 law or fact common to each of the classes that are substantially similar and
9 predominate over questions affecting individual Class Members in each of the
10 Classes. All members of the Selling Source or MoneyMutual classes were solicited by
11 one of the Selling Source websites or emails to obtain a payday loan from an illegal
12 lender. With respect to the MoneyMutual subclass, all class members were exposed
13 to the same representations on the MoneyMutual website, were referred to and
14 obtained payday loans from the illegal lenders. The same legal questions arise as to
15 the illegality of the loans and the legal effect of the representations on the
16 MoneyMutual website. All of the Cash Yes subclass members obtained the same type
17 of illegal loan.
18

19 29. The claims of Plaintiffs are typical of the claims of the members of the Classes.
20

21 30. Plaintiffs can fairly and adequately represent the interests of the Classes.
22

23 31. A class action is the superior method of adjudicating the claims of the Class
24 Members.
25

FIRST CAUSE OF ACTION FOR VIOLATION OF THE CALIFORNIA

DEFERRED DEPOSIT TRANSACTION LAW (FINANCIAL CODE § 23005) BY
ASSISTING IN THE ORIGINATION OF PAYDAY LOANS WITHOUT A
LICENSE AGAINST ALL DEFENDANTS (BROUGHT AS INDIVIDUAL

ACTIONS AND CLASS ACTION) BY PLAINTIFFS

32. Plaintiffs incorporate in this cause of action the allegations contained in paragraphs 1 through 31, inclusive.

33. Financial Code § 23000, et. seq., the California Deferred Deposit Transaction Law (CDDTL), regulates the making of Deferred Deposit Transactions, more commonly known as “payday loans.”

34. In a payday loan, the borrower receives a cash advance of a specified amount secured by a check (or electronic draft) to repay a larger amount of money in a short period of time.

35. Payday loans made to California residents by companies located in California or elsewhere are legal under certain circumstances and the industry is heavily regulated.

36. Financial Code § 23001 (a) defines a “Deferred Deposit Transaction” as a “transaction whereby a person defers depositing a customer’s personal check until a specific date, pursuant to a written agreement for a fee or other charge, as provided in Section 23035.” There is no requirement that the “personal check” be a “paper check” and commonly the borrower provides an entirely electronic version of a check or other form of authorization as security for the loan and the actual repayment is obtained by the lender by electronically withdrawing funds from the borrower’s bank account.

37. Financial Code § 23005 provides that **“no person shall offer, originate, or make a deferred deposit transaction, arrange a deferred deposit transaction for a deferred deposit originator, act as an agent for a deferred deposit originator, or assist a deferred deposit originator in the origination of a deferred deposit**

1 **transaction** without first obtaining a license from the commissioner and complying
2 with the provisions of this division.”

38.A “Deferred Deposit Originator” is “a person who offers, originates, or makes a
deferred deposit transaction.” (Financial Code § 23001(f).)

6 39. Financial Code § 23035 authorizes **licensed** payday lenders to make payday loans
7 that meet certain requirements, one of which is a cap on finance charges that is
8 much greater than California's usury law permits (10% APR). For example,
9 California law permits a \$45 finance charge on a \$255 loan that must be repaid
10 within 31 days (and no additional finance charges are allowed). Even legal payday
11 loans can be very profitable.

The Lenders

40. This lawsuit refers to UNLICENSED LENDERS, meaning persons or companies
offering loans to California residents but which do not have licenses issued by the
State of California to make a payday loan or any other type of loan to a California
resident. In addition to the UNLICENSED LENDERS that are part of the Selling
Source network as described in the next paragraph, Defendants Gateway Holdings
Group LLC, Horizon Opportunities Group, LLC, and Payday Valet are also
UNLICENSED LENDERS.

2 41. The UNLICENSED LENDERS that are part of the Selling Source network are as
3 follows: (Plaintiffs have excluded some companies which apparently offered a trivial
4 number of loans to California residents, lenders who were licensed the entire Class
5 Period and lenders who were owned by Indian tribes the entire Class Period)

- a) 24 Loan Store
- b) 3B Financial

- 1 c) 7X Services LLC (RTMM Consulting aka Paydaywiz.com)
- 2 d) A-1 Premium Acceptance (A-1 Premium Budget, Inc. aka Cash in a Wink)
- 3 e) AALM Consulting Services Ltd.
- 4 f) ABC Payday Loan
- 5 g) ABJT Funding dba Dollar Premier
- 6 h) Action Payday LLC
- 7 i) Advance Business Systems
- 8 j) Allied Finance, LLC
- 9 k) Another Fine Mess Limitada (DBA Mambo Cash)
- 10 l) Apex 1 (Cash Advance Network)
- 11 m) B Financial LLC
- 12 n) Baazing Loans LLC
- 13 o) BD PDL Services LLC
- 14 p) Big Eye Lending
- 15 q) Blizzard Interactive
- 16 r) Blue Hole Financial LDCI
- 17 s) Blue King Inc.
- 18 t) Brighton Financial
- 19 u) Cactus Lending (WTKBJT Financial)
- 20 v) Camel Coin Inc.
- 21 w) Capeside Productions, LLC
- 22 x) Cash Cure LLC
- 23 y) Cash Factory USA (prior to February 14, 2014)
- 24 z) Cash Jar (Down Under Ventures)

- 1 aa) Cash Yes (Hong Kong Partners)
- 2 bb) Center Ice Servicing LLC
- 3 cc) Churchill Financial Management
- 4 dd) Clear Loan Solutions LLC (MB Processing, LLC)
- 5 ee) ClickonCash
- 6 ff) Clickspeed Marketing
- 7 gg) Cloud 9 Marketing Inc.
- 8 hh) Coral Keys Ltd.
- 9 ii) Cowboy Productions Limited
- 10 jj) Cyberclick Marketing
- 11 kk) Cyberclick Media
- 12 ll) Devwire Consulting LLC
- 13 mm) Dialing It Up (Flobridge Group LLC)
- 14 nn) Direct Financial Solutions
- 15 oo) Direct ROI LLC
- 16 pp) DMA Financial Corp - VIP Cash
- 17 qq) Dynamic Online Solutions LLC (Seaside Trust LLC)
- 18 rr) Eastside Lenders
- 19 ss) Edata Solutions (BMG, Bahamas Marketing Group)
- 20 tt) ePayday Loan
- 21 uu) Essex Capital
- 22 vv) Fast Cash Advance
- 23 ww) Fast EFENDS
- 24 xx) Fast Pay Day Loans LLC

- 1 yy) Finestra Corporation
- 2 zz) First American Capital Resources LLC
- 3 aaa) Galaxy Marketing (Pluto Marketing, CCMI)
- 4 bbb) Global Process Ventures LLC
- 5 ccc) Government Employees Credit Center (Cash Direct Now, Dollar Financial Group)
- 6 ddd) GR Enterprises Inc.
- 7 eee) Great Falls Processing LLC
- 8 fff) Heritage Marketing (ABC Payday Loan)
- 9 ggg) Horizon Financial
- 10 hhh) IEG, LLC
- 11 iii) Inmarco (ABS)
- 12 jjj) Integrity Advance LLC
- 13 kkk) Integrity PDL Services LLC
- 14 lll) Jet Lending
- 15 mmm) Joro Resources Ltd.
- 16 nnn) Lead Express Inc
- 17 ooo) LeadPile
- 18 ppp) Lend Me Now
- 19 qqq) Lenders International
- 20 rrr) Liquid Ventures
- 21 sss) Loan Pointe LLC
- 22 ttt) MB Marketing, LLC
- 23 uuu) Mexsend S.A.P.I DE C.V. SOFOM E.N.R
- 24 vvv) MK Finance LLC

1 www) MMP Finance LLC
2 xxx) Money Key
3 yyy) MyQuickFNDS C.R.L
4 zzz) Net Pay Advance Inc.
5 aaaa) Neverland Services SA
6 bbbb) Online Advance
7 cccc) Online Lending Service LLC
8 dddd) OPM LLC
9 eeee) Orvy LLC
10 ffff) Overland Financial
11 gggg) Payday Loan Yes
12 hhhh) PBT Loan Services LLC
13 iiiii) Platinum Finance Company, LLC (Cashlink, Instant Loan Today)
14 jjjj) PMI, Inc. (Agean)
15 kkkk) RBC Servicing LLC
16 llll) RD STN Financial
17 mmmm) Red Leaf Ventures
18 nnnn) Rockhill Consulting Group, LLC dba Green Gate Servicing
19 oooo) SCS Processing, LLC
20 pppp) Shanghai Partners LLC
21 qqqq) Sierra Lending LLC
22 rrrr) Sonic Cash Processing
23 ssss) Speedy Servicing Inc
24 tttt) Star Group LLC

1 uuuu) Sure Advance LLC

2 vvvv) TailRev LLC

3 wwww) The Cash Line, LLC

4 xxxx) The Servicing Company LLC

5 yyyy) The Useful

6 zzzz) Total Management Inc

7 aaaaaa) Turtle Bay Holdings, LDC dba seaside payday and seaside dollar

8 bbbbbb) Upfrontpayday LLC

9 cccccc) VC Funding

10 ddddd) VIP PDL Services LLC

11 eeeeee) Vista B LLC (Vista B Loans, Fast Next Day Cash)

12 ffffff) Western Servicing LLC

13 gggggg) Worldwide Consumer Group LLC

14 hhhhh) Zip Management Services

15 42. All of the UNLICENSED LENDERS identified herein or as otherwise will be
16 identified during the course of this litigation are “deferred deposit originators” in
17 that they offer and make deferred deposit transactions.

18 43. Every loan made by the UNLICENSED LENDERS was illegal under California law
19 for numerous reasons but most importantly because the lender was not licensed by
20 the State of California to make a payday loan or any other type of loan for that
21 matter. Accordingly, even if the loans had not met the definition of a payday loan the
22 loan would still be illegal under California law because the lender was not licensed
23 which is required of all companies in the business of making loans.

24 44. There have been many government actions against the UNLICENSED LENDERS,

1 both as to the named Defendants and others. Cease and Desist orders have been
2 issued by the State of California against the named lenders (and other lenders) but
3 they continue to make payday loans in California
4

45. It should be kept in mind that the names of the lenders are often transitory if not
5 utterly meaningless. Lenders frequently change the names of their "companies."
6 One of the lenders' ploys is to change the name of the lender once the "heat"
7 (government action) becomes too intense and continue operations under the new
8 name.
9

10 46. Lenders owned or controlled by the Cane Bay and Rare Moon Defendants will be
11 discussed in later sections of the Complaint. Other lenders used the names Payday
12 Valet and Payday Mobility and used a fake address on the Isle of Man. Their
13 ownership is currently unknown. Another lender is ABJT Funding LLC dba Dollar
14 Premier. This lender is a little atypical because it used a fake address in the State of
15 Utah. Another unidentified lender used the names OPD Solutions, SGQ Processing,
16 Gateway Holdings Group, LLC, and Horizon Opportunities, LLC. These lenders used
17 a fake address in the West Indies.
18

19 47. As indicated above, most but not all of these lenders created fake addresses, often in
20 foreign countries such as Belize, the West Indies and the Isle of Man. The addresses
21 are typically "mail drops" or mail forwarding services and there are no real
22 operations occurring in the foreign countries. The sole purpose for this practice is to
23 avoid compliance with State law, even though the loans are made to residents of the
24 United States and California, and to make it extremely difficult to locate the true
25 owners of the illegal lenders.
26

27 48. These companies also typically use "front men" who serve as their agents in
28

1 marketing the payday loans to the public. Some of those "front men" are named as
2 defendants in this lawsuit and discussed in detail below

3 49. The UNLICENSED LENDERS pay the loan money to borrowers from banks in the
4 United States. Similarly, they use the same banks to extract money from the
5 borrowers' bank accounts. Typically, the bank accounts of the lenders are under the
6 control of the "front men" described in detail below

7 **Plaintiffs and Class Members obtain Illegal Loans and then Pay Money**

8 50. As described in greater detail below, Plaintiffs and Class Members obtained payday
9 loans, from various UNLICENSED LENDERS.

10 51. In November 2012 Plaintiff Gilbert used the MoneyMutual.com website to obtain a
11 payday loan from unlicensed lender Cash Yes and paid at last \$105 when Cash Yes
12 attempted to remove funds from his bank account. In September 2014, Plaintiff
13 Gilbert used the website of Selling Source affiliate "cashadvance.com" to obtain a
14 payday loan from unlicensed lender Camel Coin and paid at least \$100 on that loan.
15 Plaintiff did not know at the time that cashadvance.com was controlled by Selling
16 Source. Plaintiff Gilbert has also obtained loans from two lenders controlled by
17 former Defendant Rare Moon Media, LLC, but those claims are subject to this
18 Court's order compelling arbitration. Plaintiff Gilbert has also obtained loans from
19 other unlicensed lenders but currently we are unable to confirm whether those loans
20 came from members of Selling Source's marketing network.

21 52. Between January and April 2013, Plaintiff Bilbrew used the MoneyMutual.com
22 website to obtain payday loans from unlicensed lenders Cash Yes, 7x Services, LLC
23 and My Quick Funds and paid at least \$450 on these loans.

24 53. In November 2012, Plaintiff Malone used the MoneyMutual.com website to obtain
25

1 payday loans from unlicensed lenders Cash Yes and Bottom Dollar Payday and paid
2 at least \$575 on these loans.

3 54. In February and March 2013, Plaintiff Aquino used websites of Selling Source
4 affiliates to obtain payday loans from unlicensed lenders Liquid Ventures, Devwire
5 Consulting, Vista B and Vivus Servicing and paid money on all of these loans. It is
6 possible the Devwire Consulting loan was obtained through the MoneyMutual.com
7 website because so far all documentation produced by MoneyMutual defendants in
8 discovery suggests only MoneyMutual.com leads were sold to Devwire Consulting. It
9 is also possible the "Vista B" loan was really with VIP PDL Services, which is
10 controlled by former Defendant Rare Moon Media, LLC. In the same time frame,
11 Plaintiff Aquino also obtained a payday loan from Dollar Premier (ABJT Funding,
12 LLC), but it has not yet been determined whether this was obtained from a Selling
13 Source affiliate or not. Plaintiff also paid money on both the VIP PDL and Dollar
14 Premier loans.

15 55. On each of these occasions, Plaintiffs provided the lenders the electronic equivalent
16 of a personal check or draft which was "postdated" to the repayment date and the
17 respective lender agreed not to attempt to "deposit" that electronic draft prior to the
18 scheduled repayment date.

19 56. During the Class Period many of the payday loans made to Class Members were
20 made by the foregoing lenders, but many others were made by other UNLICENSED
21 LENDERS.

22 57. As set forth above, because all of the foregoing loans were made by UNLICENSED
23 LENDERS, they were all illegal.

24 **Selling Source/MoneyMutual General Marketing of Illegal Payday Loans**

1 58. As explained in greater detail below, all of the Defendants assisted one or more
2 payday lenders (deferred deposit originators) in the origination of payday loans even
3 though neither the lenders nor any of the Defendants on this cause of action had the
4 required license from the State of California. Therefore, these Defendants violated
5 Financial Code § 23005.

6 59. During the Class Period, Defendant Selling Source (~~under the ownership of former~~
7 ~~Defendant London Bay Capital~~) was engaged in the business of promoting and
8 facilitating payday loans by unlicensed lenders to California residents. Selling
9 Source did this by aggressively marketing the loans on the Internet and to a lesser
10 extent radio and television. Selling Source obtained leads in part by creating branded
11 websites. But Selling Source also sent "spam" emails to California residents and
12 displayed advertisements on websites visited by California residents.

13 60. During the Class Period, Defendant Glen McKay was President and Chief Executive
14 Officer of Defendant Selling Source, LLC. Samuel W. Humphreys, Douglas Tulley
15 and Alton F. Irby III, along with McKay, served on and controlled the Board of
16 Directors of Selling Source, LLC. Collectively these four men directly ordered,
17 authorized and participated in the tortious conduct described below including the
18 decision to promote and facilitate payday loans by unlicensed lenders to California
19 residents.

20 61. In 2007, Humphreys, Tulley and Irby, through ~~London Bay Capital~~ and some other
21 holding/acquisition companies, purchased the preexisting business known as Selling
22 Source from Derek LaFavor and Scott Tucker, the co-owners. At that time, Mr.
23 Tucker was heavily involved in the promotion of illegal payday loans and owned at
24 least two unlicensed payday lenders which made loans to California residents. Glenn
25

26

27

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1 McKay was already working with LaFavor at Selling Source as a senior officer. By
2 the beginning of the Class Period, Tucker and LaFavor had left and McKay had
3 assumed the Presidency and position on the board of directors. Humphreys, Tulley,
4 Irby, and McKay developed the plan of creating the MoneyMutual website described
5 below and hiring celebrity Montel Williams to promote the website as a source of
6 loans by unlicensed lenders to California and other US residents. These four men in
7 conjunction with Montel Williams were responsible for developing the content of the
8 MoneyMutual website and sites like it on the Internet, and the testimonials provided
9 by Mr. Williams. They knew it was illegal for these lenders to make loans to
10 California residents but intentionally promoted the lenders regardless.
11

12 62. One of the branded websites created by Selling Source to promote payday loans to
13 California residents is www.moneymutual.com. It has operated during the entire
14 Class Period.

15 63. To conceal its involvement with this website, Selling Source used a network of "shell
16 companies" and fake principals.

17 64. For example, Selling Source arranged for the creation of former Defendant Effective
18 Marketing Solutions, LLC in June 2007 in order to "hold" the domain name for
19 www.moneymutual.com. The purpose was to prevent the true identity of the owners
20 of MoneyMutual from being known to the public, including potential victims.

21 65. Another layer of obfuscation was provided by former Defendant Aaron Shoaf, who
22 incorporated Effective Marketing Solutions, LLC in June 2007. Shoaf created
23 another business entity (Tailored Business Solutions) to be the "nominee manager"
24 of Effective Marketing Solutions. That way there would be no apparent connection
25 between Selling Source and the MoneyMutual website.
26
27
28

1 66. Shoaf has admitted that the service he provides is intended to protect the true
2 owners of a business engaged in fraudulent or other illegal conduct from personal
3 liability. His website explains:

4 There are two major reasons why someone from another
5 state would establish a Nevada corporation: 1. To reduce
6 your home state taxes. 2. To protect your assets. We are sure
7 you will agree that the **best way to assure that you are**
8 **judgment proof is to appear to be poverty stricken**
9 **and destitute.** Even if you are sued and a judgment is
10 obtained against you, you have nothing to lose. Although
11 none of us want to be poverty stricken, we can arrange our
affairs to appear so. One of the best asset protection
strategies you have is to be dirt poor. Do not own anything.
(At least make it appear that you do not own anything.) You
then will be free from encumbrance.

12 67. During the Class Period, two subsidiaries of Selling Source, were Defendants
13 MoneyMutual, LLC and Partner Weekly, LLC. These defendants executed the
14 policies set forth by Selling Source with respect to the promotion of payday loans to
15 California residents.

16 68. Defendant MoneyMutual was set up to run the MoneyMutual website subject to the
17 foregoing control by Selling Source.

18 69. Defendant Partner Weekly was set up for the purpose of negotiating with and signing
marketing contracts with payday lenders.

19 70. The marketing contracts provide that payday loan leads would be sold by Partner
20 Weekly to the UNLICENSED LENDERS including but not limited to the ones
21 identified by name in this complaint. Some of these leads are generated by the
22 Money Mutual website as described in greater detail below but leads are also
23 generated by other advertising, websites, spam email, etc. Leads generated through
24 the MoneyMutual website are tracked by Partner Weekly, charged accordingly and
25
26
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1 leads generated by other means are also tracked by Partner Weekly, and charged
2 accordingly.

3 71. Most of these marketing contracts were signed by Defendant John Hashman, an
4 executive Vice President of Selling Source who signs as an officer of Partner Weekly,
5 or Defendant Brian Rauch, a former executive with Selling Source. The marketing
6 contracts are usually signed by some “front man” for the lender but in reality the
7 “front man” is usually also the lender or some affiliated company.

8 72. The marketing contracts provided that Partner Weekly would be paid a certain
9 amount of money for each potential borrower who met the lender’s requirements
10 with respect to state of residence and certain financial parameters and whose online
11 application was forwarded to the lender. The lenders only accepted leads from
12 residents of certain states and California residents were always targeted in the
13 marketing agreements at issue in this lawsuit.

14 73. This money for leads was paid whether a loan was ultimately made to the California
15 resident or not. In this way, the various MoneyMutual Defendants described below
16 profited by many millions of dollars by promoting payday loans from illegal lenders
17 to California residents during the class period

18 **Role of Cane Bay and Rare Moon Defendants in assisting in origination**
19 **of Illegal Payday Loans.**

20 74. The “Cane Bay Defendants” refer to current or former Defendants: a) former
21 defendant M. Mark High, Ltd., which used the trade names ISG International and
22 Interactive Services Group (collectively MMH); b) former defendant Cane Bay
23 Partners VI, LLLP which was formerly known as Cane Bay Partners VI, LLC
24 (collectively CBP); c) David A. Johnson; d) newly added Defendant Kirk Chewning;

1 e) former defendant Sarah Reardon; and f) newly added Defendant Vector Capital IV
2 LP.

3 75. All of the Cane Bay Defendants knew at all times that it was illegal for loans to be
4 made to California residents with Cash Yes and Cash Jar being the putative lenders
5 because they were not licensed to make loans in California. When they performed
6 their functions and roles described herein, they intended to offer and originate
7 payday loans to California residents and/or to assist the putative lenders in making
8 these loans.

9 76. During the relevant time frame, David A. Johnson and Kirk Chewning were the
10 owners of MMH and CBP. At all times, they directed, authorized and participated in
11 the conduct of the companies and their employees and at all times they were fully
12 aware of their role in assisting the origination of illegal loans to California residents.

13 77. The day to day decisions for CBP and MMH were made by David Johnson and Kirk
14 Chewning with some limited-decisions made by former Defendant Sarah Reardon.

15 78. During the class period, "Cash Yes" and "Cash Jar" were also owned by Defendants
16 David Johnson, Kirk Chewning and (as of approximately 2012²) Vector Capital.
17 Cash Yes was a trade name used by Hong Kong Partners, Ltd., which was owned and
18 controlled by those three. Cash Jar was a trade name used by Down Under Ventures,
19 Ltd., which was also owned and controlled by those three. Johnson and Chewning
20 hired a Belize incorporation service to create dummy companies in Belize and hired
21 a local woman to serve as the nominee (figurehead) director.

22 79. All of the money used by Cash Yes and Cash Jar to lend to consumers was funneled
23

24
25
26
27 ²References to the actions of Vector Capital refer to actions starting when it invested in
28 the payday lending operation, approximately in 2012.

1 to them by Johnson, Chewning and Vector Capital. All of revenue generated by Cash
2 Yes and Cash Jar was funneled out by those three. All policies and procedures
3 followed by Cash Yes and Cash Jar were developed and established by Johnson and
4 Chewning and by Vector Capital as well. Johnson, Chewning and Vector Capital shut
5 Cash Yes and Cash Jar down in approximately December 2013 and removed any
6 assets remaining in those entities.
7

8 80. To conceal their ownership and control of Cash Yes and Cash Jar and to make it
9 appear they were not the actual lenders, Johnson, Chewning and (eventually) Vector
10 Capital created or used a façade of being “consultants” to the lenders, although
11 ultimately David Johnson did not really consult with the lenders because that would
12 be consulting with “himself.”
13

14 81. In short, Johnson, Chewning and eventually Vector Capital made all of the decisions
15 regarding the lending operations including who would be targeted for the loans,
16 what criteria would have to be satisfied by the borrowers, how the loans would be
17 marketed, how the funds to make the loans would be obtained, what loan processing
18 software would be used, what loan agreements would be used, what customer service
19 and call center assistance was needed, what collections activities would be taken, and
20 perhaps most fundamentally that loans would be offered in the United States
21 including in California even though neither the lenders nor affiliated companies had
22 a license to make loans there. They were also aware of cease and desist orders by
23 state regulators including in California against unlicensed payday lenders, including
24 Cash Yes and Cash Jar, but chose to disregard those orders.
25

26 82. Although David Johnson sometimes signed the marketing agreements between
27 Partner Weekly and “Cash Yes” or “Cash Jar,” usually he directed Sarah Reardon or
28

1 "Shirlee Cornejo" to do so. Cornejo was the figurehead director Johnson hired to
2 "front" for the MMH and Cash Yes, but she had no actual authority.

3 83. Typically, Johnson and Chewning and Vector Capital exercised their control over the
4 lending operations by acting through MMH and CBP as part of the aforementioned
5 façade and to suggest that the lenders were independent of the "consultants."
6 Supposedly there was a division of responsibilities between the two companies.
7 MMH was supposed to purchase the marketing leads for potential borrowers.
8 However, MMH did not actually have any staff. All of the work was performed by
9 employees of CBP serving as "consultants" to MMH. Even though MMH was
10 supposed to be the one in charge of signing the marketing agreements, on many
11 occasions David Johnson, Sarah Reardon and others signed the agreements on
12 behalf of CBP not MMH. In her deposition, Sarah Reardon explained she would get
13 confused about which company was doing what.

14 84. MMH (under the control of Johnson, Chewning and Vector Capital) targeted
15 California residents (among residents of certain other states but not residents of
16 other states) for the payday loan marketing efforts. For example, at their direction,
17 Cash Yes made over 39,000 loans to California residents between January 2011 and
18 December 2013 and many more before January 2011. The loans in that three year
19 period represented at least 20% of the loans made by Cash Yes.

20 85. Not only were California consumers targeted on the front end but they were targeted
21 on the back end. MMH was tasked by Johnson, Chewning and Vector Capital with
22 trying to sell loans to prior California borrowers. At their direction, during the class
23 period, MMH emailed and called thousands of California residents who had already
24 taken out prior loans from Cash Yes and Cash Jar in an attempt to convince them to
25

1 take out another loan. On numerous occasions, MMH was successful and new loans
2 were made to those consumers under the “Cash Yes” or “Cash Jar” lender names.

3 86. MMH itself did not have any money to pay for the leads. That money was provided
4 by Johnson, Chewning and Vector Capital. MMH was not actually paid any money
5 for recruiting borrowers for Cash Yes and Cash Jar.

6 87. CBP was tasked by Johnson, Chewning and Vector Capital with managing the day to
7 day operations of Cash Yes and Cash Jar. This included obtaining payday loan leads
8 (supposedly from MMH), analyzing their effectiveness in terms of how many
9 resulted in the making of profitable loans, setting up and maintaining the Cash Yes
10 and Cash Jar websites, and overseeing the loan processing software that operated on
11 that website.

12 88. The Cane Bay Defendants controlled the bank accounts used to pay the loans from
13 Cash Yes and Cash Jar to consumers and to withdraw and hold the funds taken from
14 the consumers. One of the banks they used was Four Oaks Bank & Trust in North
15 Carolina. This is a small state bank with 14 branches, all in North Carolina. Thus,
16 that bank would appear to be a strange choice for companies supposedly based in the
17 Virgin Islands or Belize to use. The explanation was this bank adopted a “no
18 questions” asked approach to the high-volume questionable transactions that were
19 being processed for the lending operations. Eventually the Bank was sued by the
20 United States Justice Department for routing transactions for unlawful Internet
21 payday lenders through the ACH money transfer system, for which service it received
22 more than \$850,000 in bank fees. The Bank paid a \$1.2 million civil fine in 2014
23 and the Cane Bay Defendants were forced to look for another bank to continue their
24 payday loan operations (which by then were being done under new lender names).

1 89. Vector Capital is a venture capital firm and it was looking for a high-return
2 investment for its funds. Johnson and Chewning approached Vector Capital in
3 approximately 2012 to raise funds so more loans could be made by Cash Yes and
4 Cash Jar. They presented the financial books concerning the Cash Yes and Cash Jar
5 lending operations to Vector Capital and truthfully disclosed that the lenders made
6 thousands of loans to California residents but were not licensed in California to do
7 so. However, they told Vector Capital the loans were extremely profitable. By the
8 way, Cash Yes and Cash Jar were also making loans in other states where it was also
9 illegal for them to do so because of lack of licensure and excessive finance charges.
10 So Vector Capital was not just motivated by the prospect of benefiting from the
11 profitable loans made to California residents but by those made illegally in other
12 states as well.

13 90. After reviewing the financial books and lending operations of Cash Yes and Cash Jar,
14 Vector Capital invested at least \$2,000,000 with the express caveat that it be used to
15 make the payday loans (including to California residents). This money was placed in
16 bank accounts under the control of David Johnson and Kirk Chewning.

17 91. When Vector Capital invested money with Cash Yes and Cash Jar it did not
18 announce this fact on its website, as it routinely did with other investments nor did it
19 mention that it was involved with payday loans. The reason for this reticence was
20 that it knew the loans were illegal.

21 92. By investing this money, Vector Capital acquired ownership and control of Cash Yes
22 and Cash Jar and had complete control over the operations in conjunction with
23 Johnson and Chewning. This investment was made not just for millions of dollars
24 of revenue from loans made in California but for tens of millions of dollars for loans

1 made across the United States. Vector Capital invested the money knowing it would
2 be used to fund the illegal payday loans that were being made to California and other
3 state's residents.

4 93. Before Vector Capital was willing to invest any money in Cash Yes and Cash Jar, it
5 obtained assurances from David Johnson and Kirk Chewning that they intended to
6 continue to offer loans through Cash Yes and Cash Jar for as long as possible because
7 Vector Capital did not have the experience to operate the payday lenders on its own.
8 Thereafter, Vector Capital monitored the payday loan operations on a regular basis,
9 participated in policy decisions about expanding or contracting operations, which
10 decisions as of 2012, were made jointly by Johnson, Chewning and Vector Capital.
11 At some point in time late in 2013, due to ongoing investigations by government
12 authorities as well as lawsuits such as the instant one, Johnson, Chewning and
13 Vector Capital agreed to wind down lending operations through Cash Yes and Cash
14 Jar.
15

16 94. All of the Cane Bay Defendants including Vector Capital are still making payday
17 loans but they are just using different websites to do so. For example, they own and
18 control a lender using the website MaxLend.com, which is ostensibly affiliated with
19 an Indian tribe and therefore is not included in the scope of this lawsuit. Just to be
20 clear, however, the Cane Bay Defendants including Vector Capital know those loans
21 are also illegal.
22

23 95. The "Rare Moon Defendants" refer to Defendants Rare Moon Media, LLC, Jeremy
24 Shaffer, Brad Levene, Lindsey Coker, and Josh Mitchem. They owned and
25 controlled lenders operating under the names SCS Processing, LLC aka Everest Cash
26 Advance, VIP PDL Services, LLC aka VIP Loan Shop, Action PDL Services, LLC aka
27
28

1 Action Payday, BD PDL Services, LLC aka Bottom Dollar Payday, and Integrity PDL
2 Services, LLC aka Integrity Payday Loans aka IPL Today. In addition, Jeremy
3 Shaffer and Josh Mitchem owned MB Marketing, LLC and IEG, LLC which also
4 offered payday loans through dummy corporations. Plaintiffs are informed and
5 believe these lenders made tens of thousands of loans to California residents during
6 the Class Period. These lenders used fake addresses in Nevis, West Indies and San
7 Jose, Costa Rico. In reality, the lenders' operations were fully controlled from the
8 Kansas City, Missouri metropolitan area by the Rare Moon Defendants

96. Marketing contracts between Partner Weekly and the above Rare Moon controlled
11 lenders identify Rare Moon Media or its agents as the "entity" purchasing leads on
12 behalf of these lenders.

97. The contracts were negotiated by and often signed by Defendants Jeremy Shaffer,
14 Brad Levene, Lindsey Coker, and Josh Mitchem, all of whom were employed by and
15 acting in the scope and course of their employment with Defendant Rare Moon
16 Media, LLC when they negotiated and signed the agreements. During the relevant
17 time frame, Josh Mitchem is listed in the agreements as the President and CEO of
18 the lenders. However, Jeremy Shaffer is also listed as the President of the lenders in
19 the same time frame. Brad Levene is listed as the Director or Vice-President of
20 Marketing for the lenders in the same time frame. Lindsey Coker was in charge of
21 billing services with respect to the leads in the relevant time frame.

98. Defendants Shaffer and Mitchem were the founders of Rare Moon Media, LLC in
25 2010. This company was set up because previously Josh Mitchem owned two other
26 companies that served as front men for illegal lenders—PDL Support, LLC and
27 Platinum B Services, LLC. Those companies serviced the same two lenders and

1 other illegal lenders. Mitchem entered into a consent decree with the Arkansas
2 Attorney General and agreed to pay a fine and shut down operations in that state in
3 August 2012. Plaintiffs are informed and believe, and thereupon allege, that those
4 companies were facing other government investigations. Mitchem set up Rare Moon
5 Media to duplicate the services he previously provided with the other companies
6 which were shut down or under investigation.

7 99. The Rare Moon Defendants also control the bank accounts used to pay the loans to
8 consumers made by the Rare Moon controlled lenders and to withdraw and hold the
9 funds taken from the consumers. They used Missouri Bank and Trust for this
10 purpose, another small state bank with four branches in the Kansas City area. They
11 selected this Bank because it is geographically close to their operations center in
12 Kansas City and because it also has a reputation for cooperating with illegal payday
13 lenders.

14 **Selling Source/MoneyMutual Marketing of Illegal Payday Loans through
15 the MoneyMutual website**

16 100. As alluded to earlier, former Defendants London Bay Capital, LLC, TSS
17 Aquisition Company, LLC, Effective Marketing Solutions, LLC, Aaron Shoaf, and
18 remaining Defendants Selling Source, LLC, Glen McKay, MoneyMutual, LLC,
19 Partner Weekly, LLC, John Hashman, Brian Rauch, Samuel W. Humphreys, Douglas
20 Tolley and Alton F. Irby III [Collectively, the "MoneyMutual Defendants"] generated
21 much of their revenue by selling payday loan leads through the MoneyMutual
22 website (www.moneymutual.com), which was widely advertised on television, radio
23 and the Internet.

24 101. The MoneyMutual website contained many pages promoting its network of
25

1 payday lenders. The website explains: "A cash advance is a signature loan backed by
2 a future source of income, usually your paycheck. That's why they are also known as
3 'payday loans.' A cash advance is designed to help you out through a temporary loss
4 of cash or an unforeseen emergency. You can use the cash for car repair, food, credit
5 card bills, other bills, rent, travel or whatever you need. Payday loans, short term
6 loans, cash advance loans and installment loans are growing in popularity because
7 they are easy to obtain and can be an excellent alternative to exorbitant late fees,
8 reconnect fees and other penalties creditors can charge against your accounts."

102. It further explained: "Getting your cash is as easy as 1-2-3. MoneyMutual is not
11 a lender. Instead, we have built one of the nation's largest networks of online short-
12 term lenders. After submitting your information, if you are matched with a lender,
13 MoneyMutual will redirect to the lender's web site where you will be able to review
14 loan terms and conditions. In many cases, the lender will then contact you to
15 confirm your personal information and finalize the loan. They may contact you via
16 telephone, email, text messages, etc. Please make sure that you respond in a timely
17 manner to ensure that funds are deposited as quickly as possible."

103. The website assured consumers that all lenders on the MoneyMutual Network are
20 required to adhere to a Code of Lender Conduct, which includes several
21 requirements. One of the requirements is that the Lenders on the network are
22 prohibited from using the borrower's personal information to market other products
23 or services or give the information to third parties. However, this requirement was
24 routinely violated by the lenders retained by Plaintiffs and the Class Members. The
25 Lenders sold or gave the information to other entities so they could "spam" the
26 borrowers in an attempt to sell more loans to them in the future. The Lenders also
27
28

1 sold Plaintiffs' and Class Members' personal information (including social security
2 numbers) to criminal operations often based in other countries. Those criminals
3 would then make threatening phone calls to Plaintiffs' and Class Members claiming
4 they represented law enforcement agencies and they were going to arrest these
5 borrowers unless the borrowers paid money they supposedly owed.

6 104. Another requirement of the Code of Lender Conduct was that "Lenders shall not
7 engage in harassing or abusive collections practices and agree to comply with any
8 and all applicable federal and state collections practices laws and regulations." This
9 requirement was also routinely violated by the lenders on the network. As noted
10 above, lenders harassed borrowers including Plaintiffs and Class Members who fell
11 behind in their payments. More importantly, "federal and state collections practices
12 law and regulations" prohibit attempting to collect on an unlawful debt. Yet, all of
13 the lenders on the network tried to collect money from Plaintiffs and the Class
14 Members even though the debts were unlawful (void). They tried to collect the
15 money either by debiting it from Plaintiffs and Class Members' bank accounts or by
16 making written or oral demands for payment. In these demands, the lenders falsely
17 stated that Plaintiffs and Class Members were legally obligated to pay the money.
18 They never told the truth to the borrowers (i.e., that the loans were void and any
19 repayment was purely a voluntary act of charity).

20 105. The website claimed that "MoneyMutual regularly monitors lender practices for
21 compliance with this Code of Lender Conduct. In the event that MoneyMutual
22 determines that a lender is not acting in accordance with this Code of Lender
23 Conduct, that lender's participation in the MoneyMutual program is subject to
24 suspension and/or possible termination."

1 106. In reality, the MoneyMutual Defendants did not monitor the lenders for
2 compliance. To the contrary, they were aware the lenders did not comply with the
3 Code of Lender Conduct, but took no action to suspend or terminate their
4 membership in the lending network. The only lenders suspended or terminated
5 were those who did not pay the MoneyMutual Defendants the required fees for the
6 leads.

7
8 107. During the same period, television celebrity Montel Brian Anthony Williams,
9 promoted and highly recommended the www.moneymutual.com website and the
10 payday loan referral services provided therein by means of radio, television and
11 Internet advertising. He continues to do so today.

12
13 108. For example, during the Class Period, on the homepage of
14 www.moneymutual.com, there was a large picture of a smiling Montel Williams and
15 a quote from him saying “Money Mutual’s online lending network is a cash source
16 you can trust for finding a short term cash loan quickly and easily.” There is also a
17 logo “As seen on TV.” Mr. Williams has appeared in numerous television and radio
18 commercials during the Class Period for the purpose of promoting
19 www.moneymutual.com.

20
21 109. On YouTube, at www.youtube.com/user/moneymutual?feature=results_main,
22 many of these commercials can be found on the “channel” dedicated to
23 MoneyMutual. In one of the commercials, Mr. Williams assured the viewers or
24 listeners that MoneyMutual can connect consumers to over 100 lenders, who can
25 lend up to \$1,000 fast and “no worries.” In another commercial, he described some
26 financial emergencies that might befall the consumer and then says “I am here to
27 offer you a backup plan—MoneyMutual.” In another commercial, Mr. Williams, in

1 referring to MoneyMutual stated "We have helped people all across America." In
2 another commercial, Mr. Williams again refers to MoneyMutual when he states "We
3 have the largest network of short-term lenders who can get you up to \$1,000...." In
4 another commercial, Mr. Williams stated "Hi, I'm Montel Williams from
5 MoneyMutual, your trusted source of over 60 lenders to get you short-term cash.... .
6 Look for me and you will know it's MoneyMutual." Finally, in a commercial dating
7 back to December 2009, Mr. Williams stated "Hi, I'm Montel Williams, would an
8 extra \$1,000 come in handy right now? Then I would like to talk to you about
9 MoneyMutual. It's your trusted source to over 60 lenders to get you up to \$1,000
10 fast....."

110. On the MoneyMutual website, during the Class Period there was a frequently
12 asked questions page that contained the following information: "Q. Why is Montel
13 Williams endorsing this site? A. Montel Williams has endorsed MoneyMutual to
14 provide access to short term cash loans to people who have no other alternatives.
15 Montel takes pride in being able to provide people with information to help them live
16 better physically, spiritually, financially, and emotionally. Montel understands that
17 people have unexpected and needed expenses and sometimes difficult to pay due to
18 lack of funds or credit. Rather than bounce a check, or receive late payment
19 penalties, Montel believes that a short term loan from MoneyMutual's network of
20 participating lenders can provide the immediate assistance to avoid costly fees.
21 According to Williams, "MoneyMutual's online lending network is the only source
22 you can trust for finding a short term loan quickly and easily." MoneyMutual allows
23 people to receive instant approval on getting a cash loan of up to \$1,000*.
24 Restrictions do apply. See Moneymutual.com for details."

1 111. On a different page of the MoneyMutual website, during the Class Period, this
2 statement was displayed: "Why does Montel Williams endorse MoneyMutual?
3 Celebrated talk show host and Daytime Emmy Award winner Montel Williams
4 associates himself only with products that help people live better physically,
5 spiritually, financially and emotionally. He understands that people will find
6 themselves with difficult to pay expenses due to lack of funds or credit and agrees
7 that a cash advance can provide the needed quick assistance and help avoid more
8 costly fees."

9
10 112. As indicated above, Mr. Williams did not simply act as a celebrity endorser of a
11 product, but repeatedly personally vouched for the integrity of the MoneyMutual
12 lending network and repeatedly stated or implied that he personally was part of
13 MoneyMutual.
14

15 113. The MoneyMutual Defendants paid Mr. Williams a substantial fee for his services
16 in "endorsing" the website.

17 114. Notwithstanding the foregoing assurances and the Lender's Code of Conduct, in
18 reality, the MoneyMutual Network has been comprised of many, if not mostly, illegal
19 and criminal lenders, some of which are identified here as the UNLICENSED
20 LENDERS.
21

22 115. The MoneyMutual Defendants and Montel Williams decided which lenders
23 would be added to the MoneyMutual Lending Network. They considered
24 applications submitted by the lenders including any proof of licensing as well as the
25 lender's websites. They knew from these information sources that many of the
26 lenders were not licensed to make payday loans. They further knew that since those
27 UNLICENSED LENDERS could not legally make any payday loans, they could not
28

1 legally collect payments on the loans. It is against federal and California debt
2 collection law to attempt to collect on a debt that is not a lawful debt (i.e., a void
3 loan). They further knew that the lenders were violating the MoneyMutual website
4 Lender's Code of Conduct by not being licensed and collecting and trying to collect
5 payments on these illegal loans. Nevertheless, the MoneyMutual Defendants and
6 Montel Williams permitted these lenders to join and to continue to participate in the
7 Lending Network during the Class Period and represented that they were legally
8 authorized to make the loans and to collect payment.

9
10 116. During the Class Period, the Departments of Corporations and Attorneys General
11 for numerous States issued cease and desist notices against many of the
12 UNLICENSED LENDERS affiliated with the MoneyMutual website. The
13 MoneyMutual Defendants and Montel Williams knew of these various State law
14 enforcement actions but continued to recommend these lenders to consumers and to
15 represent that they were in compliance with all applicable laws.
16

17 117. At no time during the Class Period, did Mr. Williams or the MoneyMutual
18 Defendants disclose that many of the "approved lenders" were illegal or unlicensed.
19

20 118. In allowing these illegal lenders to join the Lending Network and in
21 recommending the services of these illegal lenders to consumers, and in concealing
22 the illegal status of the lenders, and by representing they were in compliance with all
23 applicable laws, MoneyMutual Defendants and Montel Williams intended to provide
24 and did provide substantial assistance and encouragement to the illegal lenders.
25

26 119. They did so knowingly because the MoneyMutual Defendants and Montel
27 Williams were paid a significant amount of money, often between \$100 and \$170 per
28 accepted lead, by the lenders. They intended to have the MoneyMutual website lend

1 an aura of respectability and further encourage consumers to take loans from the
2 illegal lenders in the Lending Network.

3 120. With respect to the specific loans referenced in paragraphs 51 to 54 as being
4 originated through the MoneyMutual website, the Plaintiffs read the website, and
5 believed the representations contained therein and described above. In reliance on
6 the general representations on the moneymutual.com website and on those made by
7 Montel Williams that the lenders were trustworthy and reliable, and in reliance
8 about the specific representations made in the Lender's Code of Conduct described
9 above, Plaintiffs applied for loans through the MoneyMutual website. After they
10 submitted their applications, there were notified of the name or names of lenders
11 who were willing to make loans to them.
12

13 121. Specifically, Plaintiffs reasonably believed ~~based on the assurances the "lending~~
14 ~~network" was trustworthy and reliable, that the lenders on the network were~~
15 ~~trustworthy and reliable.~~—trusting the network is the same as trusting the lenders.
16 They also reasonably understood the Lender Code of Conduct to be grounds to
17 believe the lenders were lawful companies offering a lawful service. For example, the
18 assurance the lenders would not (without penalty) violate debt collection laws,
19 reasonably meant to the Plaintiffs that the lenders would not attempt to collect an
20 illegal debt and, therefore, could legally offer the loans in question.
21

22 122. If Plaintiffs had known the truth about the lenders, ~~that they were not~~
23 ~~trustworthy and reliable as claimed by the MoneyMutual Defendants,~~ that they did
24 not comply with the Lender's Code of Conduct but in fact were making illegal loans
25 and then improperly trying to collect on them, and that they routinely shared
26 personal information with criminals, they would not have trusted or used any of the
27
28

1 lenders on the MoneyMutual network of lenders. They would not have trusted
2 MoneyMutual or the lenders with their personal information including their social
3 security numbers.

4 123. Similarly, during the Class Period, the Class Members were referred through the
5 MoneyMutual website to the UNLICENSED LENDERS which offered, originated or
6 made Deferred Deposit Transactions. The MoneyMutual website continues to
7 operate in this manner today.

8 124. Additionally, through other websites, advertising and spam email, Defendants
9 referred Class Members to UNLICENSED LENDERS even though Defendants knew
10 the lenders had no license. Defendants continue to make these referrals today.

11 **General Allegations against all Defendants**

12 125. In the foregoing manners, whether as the UNLICENSED LENDERS, as the “front
13 men” for the “UNLICENSED LENDERS” or by advertising for payday loan
14 customers and referring those customers to the UNLICENSED LENDERS, all of the
15 Defendants violated Financial Code § 23005 either by offering, making, arranging or
16 assisting in the origination of illegal payday loans. All of the lenders were required to
17 have a license to make such loans to California residents and none of them had a
18 license. They continue to operate illegally today.

19 126. Financial Code § 23060 (a) provides “If any amount other than, or in excess of,
20 the charges or fees permitted by this division is willfully charged, contracted for, or
21 received, a deferred deposit transaction contract shall be void, and no person shall
22 have any right to collect or receive the principal amount provided in the deferred
23 deposit transaction, any charges, or fees in connection with the transaction.”

24 127. Financial Code § 23060 (b) provides “If any provision of this division is willfully

1 violated in the making or collection of a deferred deposit transaction, the deferred
2 deposit transaction contract shall be void, and no person shall have any right to
3 collect or receive any amount provided in the deferred deposit transaction, any
4 charges, or fees in connection with the transaction.”
5

6 128. Moreover, pursuant to Financial Code § 23065, the knowing and willful violation
7 of any provision of the CDDTL by a lender is punishable as a criminal offense
8 carrying up to one year in and payment of a \$10,000 fine.

9 129. As a result of the aforementioned willful violations of provisions of the CDDTL,
10 Plaintiffs and each of the Class Members’ Loan Agreements is void as a matter of law
11 and no person shall have any right to collect or receive the principal amount (or any
12 amount) provided in the deferred deposit transaction, any charges, or fees in
13 connection with the transaction.”
14

15 130. Additionally, pursuant to Financial Code § 23064, Plaintiffs and the Class
16 Members may recover from the Defendants up to three times the damages actually
17 incurred but in no event less than the amount paid by them to the UNLICENSED
18 LENDERS.
19

20 131. Further, pursuant to Financial Code § 23064, upon a determination that
21 Defendants’ violations were willful, the Court may award punitive damages in
22 addition to the amounts set forth above.

23 132. Further, pursuant to Financial Code § 23064, the Court should order Defendants
24 to make restitution and disgorge all money obtained by any of the Defendants in
25 connection with these illegal transactions and shall further enjoin Defendants from
26 offering, making, arranging or assisting in the origination of the payday loans.
27

28 **SECOND CAUSE OF ACTION FOR VIOLATIONS OF RICO, 18 U.S.C. § 1962**

**(c), OPERATION OF AN ENTERPRISE THROUGH RACKETEERING
ACTIVITY OR THROUGH COLLECTION OF UNLAWFUL DEBT AGAINST
ALL DEFENDANTS (BROUGHT AS AN INDIVIDUAL ACTION AND CLASS
ACTION) BY PLAINTIFFS**

133. Plaintiffs incorporate in this cause of action the allegations contained in paragraphs 1 through 132, inclusive.

134. During the Class Period each of the Defendants and each of the UNLICENSED
LENDERS who are not currently named as parties was a "RICO" PERSON and was
organized and associated with each other in an unnamed entity constituting an
"association in fact" that constituted a RICO enterprise as that term is defined in 18
U.S.C. § 1961 (4). Defendants and the unnamed UNLICENSED LENDERS were
associated together for the common purpose of marketing services to the general
public for their mutual profit.

135. This association had a distinct division of labor and was and is organized and maintained by and through a consensual hierarchy of partners, managers, directors, officers, supervisors, and/or representatives from all RICO PERSONS that formulated and implemented policies relative to the advertising and marketing of services to the general public. It continued as a unit, with a core membership, over a substantial period of time and was an ongoing organization established for an economic motive. The association in fact remains viable and active at the time of filing of this amended complaint.

136. This association is and was separate and distinct from the pattern of racketeering activity described in the Complaint in that the association also engaged in conduct unrelated to the racketeering activity and would still exist even if the racketeering

1 activity did not exist.

2 137. The aforementioned enterprise engaged in or affected interstate commerce by
3 using the interstate telephone networks and Internet, interstate telecommunication
4 lines and the United States Mail to advertise and market payday loans, to originate
5 and execute payday loan agreements, to distribute funds and collect payments from
6 persons obtaining these loans, and to engage in debt collection efforts with respect to
7 these loans.

8 138. Defendants, acting through the aforementioned enterprise, and during the Class
9 Period and continuing, engaged in the collection of unlawful debt within the
10 meaning of 18 USC § 1961 (6) in that the debt incurred by Plaintiffs and the Class
11 Members is unenforceable under California law because of laws relating to usury
12 including California Constitution, Article 15, Section 1 as well as the requirements of
13 the CDDTL, and the annual percentage rate charged by all the UNLICENSED
14 LENDERS, who are all engaged in the business of lending money, was more than
15 twice the enforceable rate (10%) under California law. In every instances, the APR
16 on the payday loans obtained by Plaintiffs and the Class Members was more than
17 100%.

18 139. Defendants, acting through the aforementioned enterprise, and during the Class
19 Period and continuing thereafter, engaged in “racketeering activity” within the
20 meaning of 18 USC § 1961 (1) by engaging in the acts set forth herein, aiding and
21 abetting the commission of the foregoing acts, and conspiring to commit the
22 foregoing acts, and directly or indirectly conducting the RICO enterprise’s affairs,
23 which constituted numerous violations of 18 U.S.C. § 1341 (mail fraud) and 18 U.S.C.
24 § 1343 (wife fraud).

1 140. 18 U.S.C. § 1343 (wire fraud) states in relevant part: "Whoever, having devised or
2 intending to devise any scheme or artifice to defraud, or for obtaining money or
3 property by means of false or fraudulent pretenses, representations, or promises,
4 transmits or causes to be transmitted by means of wire, radio, or television
5 communication in interstate or foreign commerce, any writings, signs, signals,
6 pictures, or sounds for the purpose of executing such scheme or artifice, shall be
7 fined under this title or imprisoned not more than 20 years, or both.
8

9 141. 18 U.S.C. § 1341 (mail fraud) states in relevant part: "Whoever, having devised or
10 intending to devise any scheme or artifice to defraud, or for obtaining money or
11 property by means of false or fraudulent pretenses, representations, or promises, . . .,
12 for the purpose of executing such scheme or artifice or attempting so to do, places in
13 any post office or authorized depository for mail matter, any matter or thing
14 whatever to be sent or delivered by the Postal Service, or deposits or causes to be
15 deposited any matter or thing whatever to be sent or delivered by any private or
16 commercial interstate carrier, or takes or receives therefrom, any such matter or
17 thing, or knowingly causes to be delivered by mail or such carrier according to the
18 direction thereon, or at the place at which it is directed to be delivered by the person
19 to whom it is addressed, any such matter or thing, shall be fined under this title or
20 imprisoned not more than 20 years, or both."
21

22 142. Plaintiffs allege that the aforementioned activities and/or conduct engaged in by
23 Defendants constituted a "pattern of racketeering activity," as that term is defined in
24 18 U.S.C. § 1961 (5) in that Defendants committed acts indictable under 18 U.S.C. §
25 1341 and 18 U.S.C. § 1343, on two or more occasions where Plaintiffs and the Class
26 Members personally lost money as a result of the racketeering activity. The number
27
28

1 of individual violations was more than 40,000.

2 143. As a proximate result of Defendants' violations of RICO, Plaintiffs and Class
3 Members have suffered damages and/or injuries to their interests in business and/or
4 property through the payment of sums of money as previously alleged.

5 144. Defendants' conduct was intentional, malicious and intended to harm Plaintiffs
6 and the Class Members. Consequently, Plaintiffs and Class Members are entitled to
7 recover an award of exemplary and punitive damages.

8

9 **THIRD CAUSE OF ACTION FOR VIOLATION OF THE UNFAIR**
10 **COMPETITION LAW AGAINST ALL DEFENDANTS (BROUGHT AS**
11 **INDIVIDUAL ACTION AND CLASS ACTION) BY PLAINTIFFS**

12 145. Plaintiffs incorporate in this cause of action the allegations contained in
13 paragraphs 1 through 144, inclusive.

14 146. The Unfair Competition Law prohibits any person from engaging in unfair
15 competition as that term is defined in Business and Professions Code § 17200, which
16 includes any "unlawful, unfair or fraudulent business act or practice," "unfair,
17 deceptive, untrue or misleading advertising," and any act prohibited by Chapter 1
18 (commencing with section 17500) of Part 3 of Division 7 of the Business and
19 Professions Code.

20 147. During the Class Period, Defendants violated various sections of the Financial
21 Code as set forth above, which constituted an unlawful business practice.

22 148. As a proximate result of the violation of the UCL as set forth above, Plaintiffs
23 suffered injury in fact and sustained monetary loss (hundreds of dollars) according
24 to proof.

25 149. Similarly, during the class period, Class Members also lost money as a result of

1 the illegal Deferred Deposit Transactions.

2 150. Pursuant to Business and Professions Code § 17203 and § 17204, Plaintiffs are
3 empowered to compel Defendants to restore to Plaintiffs and the Class Members the
4 money or property that the UNLICENSED LENDERS acquired as a result of any act
5 which constitutes unfair competition.

6 151. The conduct of Defendants will continue to harm the general public unless it is
7 enjoined.

8

9 **FOURTH CAUSE OF ACTION FOR VIOLATION OF THE UNFAIR**

10 **COMPETITION LAW—FRAUD-- AGAINST DEFENDANTS SELLING**

11 **SOURCE, LLC, GLEN MCKAY, MONEY MUTUAL, LLC, PARTNER WEEKLY,**

12 **LLC, JOHN HASHMAN, BRIAN RAUCH, SAMUEL W. HUMPHREYS,**

13 **DOUGLAS TULLEY AND ALTON F. IRBY III (BROUGHT AS INDIVIDUAL**

14 **ACTION AND CLASS ACTION) BY PLAINTIFFS³**

15 152. Plaintiffs incorporate in this cause of action the allegations contained in
16 paragraphs 1 through 151, inclusive.

17 153. As previously alleged, the MoneyMutual Defendants and Montel Williams made
18 false, misleading and deceptive statements about the reliability and trustworthiness
19 and legal status of the lenders in the Lending Network including the UNLICENSED
20 LENDERS. This constituted a fraudulent business practice in violation of the UCL.

21 154. As a proximate result of the violation of the UCL as set forth above, Plaintiffs
22 suffered injury in fact and sustained monetary loss (hundreds of dollars) according
23 to proof.

24

25

26

27 3Plaintiffs have removed Montel Brian Anthony Williams from this claim in accordance
28 with this Court's order (Doc. 199).

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1 155. Similarly, during the class period, thousands of Class Members also lost money to
2 Defendants as a result of the violation of the Unfair Competition Law.

3 156. Pursuant to Business and Professions Code § 17203 and § 17204, Plaintiffs are
4 empowered to compel Defendants to restore to Plaintiffs and the Class Members the
5 money or property that Defendants acquired as a result of any act which constitutes
6 unfair competition.

7 157. The conduct of Defendants will continue to harm the general public unless it is
8 enjoined.

9 10 **REQUEST FOR JURY TRIAL**

11 WHEREFORE, Plaintiffs requests trial by jury.

12 13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs pray for judgment on all causes of action against
15 Defendants as follows:

16 1. For an order certifying this matter as a class action;
17 2. For a declaration of the rights and liabilities of the parties including a declaration
18 that the UNLICENSED LENDERS' payday loans made with the Plaintiffs and Class
19 Members were illegal and that any debt arising from these transactions is void.
20 3. For preliminary and permanent injunctive relief pursuant to Financial Code § 23064
21 and Business and Professions Code § 17203 restraining and enjoining Defendants
22 from continuing the acts of unlawful competition set forth above, requiring
23 Defendants to take any acts needed to prevent further violations, and requiring
24 Defendants to take affirmative measures to redress past wrongdoings;
25 4. For an order requiring Defendants other than MoneyMutual Defendants and
26 Williams to provide an accounting of all moneys which they may have received as a
27
28

1 result of the acts and practices found to constitute unfair competition under
2 Business and Professions Code § 17200;

3 5. For an order that Defendants other than MoneyMutual Defendants and Williams
4 identify, locate and make restitution to affected members of the general public, and
5 specifically the members of the Class, and all additional orders necessary to
6 accomplish this purpose, pursuant to Business and Professions Code § 17203;

7 6. For restitutionary and nonrestitutionary disgorgement of any money obtained by
8 Defendants in connection with the promotion and making of illegal loans

9 7. For distribution of any moneys recovered on behalf of members of the Class, via fluid
10 recovery or cy pres recovery where necessary to prevent Defendant from retaining
11 the benefits of their wrongful conduct as provided in California v. Levi Strauss & Co.
12 (1986) 41 Cal.3d 460 and People v. Thomas Shelton Powers, M.D. Inc. (1992) 2
13 Cal.App.4th 330;

14 8. For compensatory damages on the first cause of action not to be less than the
15 amount paid by Plaintiffs and each Class Member and not to exceed three times any
16 damages;

17 9. For compensatory damages, said sum to be trebled pursuant to 18 U.S.C. § 1964 (c),
18 on the second cause of action;

19 10. For punitive or exemplary damages on the first and second causes of action;

20 11. For prejudgment interest on the sum of money awarded as damages or restitution;

21 12. For reasonable attorney's fees pursuant to Financial Code § 23064, pursuant to 18
22 U.S.C. § 1964 (c), pursuant to the Private Attorney General doctrine in Code of Civil
23 Procedure § 1021.5, pursuant to the "common fund" doctrine, and pursuant to the
24 "substantial benefit" doctrine.

25

26

27

28

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- 1 13. For costs of suit incurred herein; and
- 2 14. For such other and further relief as the court may deem proper.

3 DATED: September 25, 2015

4 Respectfully submitted,

5 By /s/ Jeffrey Wilens

6 JEFFREY WILENS
7 Attorney for Plaintiffs

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